

START OF RETAKE

ROLL NO.: 700 82.35

TITLE OF RECORD SERIES: Public Service Commission - Original Order
Case # 8151 September 2, 1981

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In the Matter of

ORDER DENYING REHEARING

We begin by noting that a regulatory agency is not required to respond to every item raised in a proceeding by an applicant. 1/ This is especially true where the "applicant" is also a complainant having the burden of proof before such agency. 2/ However, for the sake of clarity (and perhaps

2/ Energy Regulatory Commission v. Kentucky Power Co., Ky. App., 605 S.W.2d 46 (1980)

finality) in this matter, the Commission will specifically address the remaining motions filed by the Homeowners on July 6, 1981. It was the understanding of the Commission that the voluminous deposition taken between the parties prior to the hearings (and prior to our approval to even take such deposition) was verbally approved by the Commission during the subsequent hearings in this matter. However, to avoid researching the 350 page transcript in this matter, the Commission will simply grant the motion for inclusion of the deposition into the official record of this case. The Commission hereby denies the Homeowners' "second" motion which was to strike the entire statement of operations of Goshen Utilities from the record. The Commission's Order of July 27, 1981, found many of Goshen's operation expenses to be reasonable, and, thus, the Homeowners have failed in their burden of proving that the entire statement of operations should be stricken. Goshen's third "motion" was for a ruling that the "Homeowners' pleadings constitute a valid complaint in this matter." The very title of this action in Case No. 8151, 3/ should have made it perfectly clear that the Commission treated the Homeowners' pleading as a valid complaint. However, the Commission hereby rules that the pleadings of the Homeowners constitute a "valid complaint." The last motion that the Homeowners request a specific ruling on is that Goshen violated the provisions of K.R.S. 278.020(1) by failing to get a certificate of public convenience and necessity for (a) Goshen's purchase of Cardinal

3/ "The Complaint of United Goshen Homeowners Against Goshen Utilities, Inc." (Emphasis supplied).

Harbour Sanitation, (b) Goshen's purchase of Harmony Lake, and (c) Goshen's commencement of its 1979 expansion program. In regard to points (a) and (b) recited above, the Commission points out that no certificate under K.R.S. 278.020 is required for the purchase of additional assets by a utility. That part of Motion No. 7 is, accordingly, denied. However, the Commission agrees that Goshen should have obtained prior certificate approval before engaging in its 1979 expansion program. The Commission, therefore, admonishes Goshen Utilities that any further such expansion without prior certificate approval may subject the utility to the penalty provisions of K.R.S. 278.990.

We now return to the Homeowners' contentions that the Commission's conclusions regarding a proper rate for Goshen to charge from July 27, 1981, forward were erroneous. After review of these arguments, the Commission is of the opinion and so finds that these arguments represent nothing more than a re-argument of the Homeowners' position throughout the hearings. No additional evidence has been presented by the Homeowners to warrant this Commission's reconsideration of its original opinion under the provisions of K.R.S. 278.400.

For all of the above-stated reasons, the application for rehearing filed by United Goshen Homeowners, be, and hereby is, denied.

Done at Frankfort, Kentucky this 2nd day of September,
1981.

PUBLIC SERVICE COMMISSION

Marlin M. Voth
Chairman

Did not participate
Vice Chairman

Jim Hanigan
Commissioner

ATTEST:

Secretary